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January 31, 2017

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **Video Relay Service (VRS) Rate Proposal**
CG Docket Nos. 10-51 & 03-123

Dear Ms. Dortch:

Purple Communications, Inc. ("Purple"), Convo Communications, LLC ("Convo"), CSDVRS, LLC dba ZVRS, and ASL Services Holdings, LLC dba GlobalVRS (collectively, the "non-dominant providers") respectfully request that the Commission propose to implement the VRS rate structure outlined herein, and urge the Commission to expeditiously issue a Further Notice of Proposed Rulemaking ("FNPRM") concerning VRS rate reform that includes this proposal. Current VRS rates threaten to eliminate participation of the non-dominant providers and risk locking in a monopoly VRS market.

When the Commission adopted the four-year rate reduction "glide path" in the *VRS Reform Order*,[1] it anticipated that planned structural and competitive reforms of the VRS market would enable the non-dominant providers to grow their market share and reduce operating costs, allowing those providers to absorb the rate reductions in order to promote a competitive VRS market. However, many of the anticipated structural and competitive reforms have yet to be implemented or take effect, and the VRS market remains dominated by a single provider.

As a result, the current glide path has, in fact, benefited the dominant provider by forcing the non-dominant providers to reduce costs below optimum operating thresholds

[1] *Structure and Practices of the Video Relay Service Program* et al., CG Docket Nos. 10-51 & 03-123, Report and Order and Further Notice of Proposed Rulemaking, 28 FCC Rcd 8618 (June 10, 2013) ("*VRS Reform Order*").

(*i.e.*, near break-even or at an operating loss), while the dominant provider continues to compete from a position of comparative financial strength.

The Commission acknowledged the unequal distribution of VRS market share when it issued a temporary rate freeze for the current Tier I providers.[2] However, the rate reduction that took effect on January 1, 2017 threatens the viability of all non-dominant providers, and will result in only further concentrating the VRS market.

The rate proposal detailed here would move all providers toward a more reasonable operating margin – and Tier I providers toward an operating margin prospectively – while creating much needed rate stability that enhances providers' ability to plan and grow. Critically, the proposal also reduces costs to the TRS Fund, generating an estimated total $14 million in savings to the Fund in the first four years of its implementation.

Additionally, to best meet the mandate of functionally equivalent service by promoting competition, innovation, and quality of service in VRS, the non-dominant providers recommend that the Commission issue the proposed FNPRM regarding rate reform (including the rate proposal detailed below) contemporaneously with: (1) an Order that implements a trial of skills-based routing that includes the use of deaf interpreters and Certified Deaf Interpreters ("CDIs"), and that allows VRS providers to assign ten-digit iTRS numbers to hearing individuals who can use American Sign Language ("ASL") to communicate; and (2) a Notice of Inquiry ("NOI") regarding appropriate VRS service quality metrics.

[2] *See Structure and Practices of the Video Relay Service Program* et al., CG Docket Nos. 10-51 & 03-123, Report and Order, FCC 16-25 (Mar. 3, 2016) ("*VRS Tier I Provider Rate Freeze Order*").

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I. STATE OF THE VRS MARKET

a. The VRS market is a de facto monopoly market, as a result of which calculating rates for the non-dominant providers based on weighted average provider costs is inequitable.

The VRS market is a de facto monopoly market comprised of two Tier I providers, two small providers, and one dominant provider.[3] The non-dominant providers strongly believe that, because the market is so unequally distributed, it is inequitable to calculate rates for the non-dominant providers based on a weighted average provider cost.[4]

Specifically, the TRS Fund Administrator Rolka Loube utilizes an "industry weighted average cost per minute" in determining average provider costs. However, because one provider has a de facto monopoly position within the market, continued use of a "weighted average" calculation essentially ignores the costs of all other providers because their volumes do not carry enough market "weight" to materially impact that calculation, as has historically been demonstrated. The Commission has previously acknowledged as much. In the *2007 TRS Rate Methodology Order*, the Commission explained that, at that time, "one provider has a dominant [VRS] market share, and thus this individual provider's projected minutes and costs largely determine the rate. The record reflects, however, that providers with a relatively small number of minutes generally have higher per-minute costs."[5]

The inequity that the Commission identified in 2007 is still present in today's VRS market. For example, the lopsided market share distribution in the VRS industry results in a stated "weighted average" cost of $2.83 per minute for 2015 and $2.92 per minute projected for 2016 for all providers (when including "Outreach" costs and excluding "Return on Investment"), compared to reported and projected costs for the three smallest providers of $5.31 per minute for 2015 and $4.70 per minute for 2016.[6] Indeed, the Commission has

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[3] *See* Comments of Purple Communications, Inc., CG Docket Nos. 10-51 & 03-123, at 8-9 (Dec. 9, 2015) ("Purple VRS Rate Freeze Comments"); Comments of Purple Communications, Inc., CG Docket Nos. 10-51 & 03-123, at 5 (May 24, 2016) ("Purple 2016-2017 Fund Estimate Comments").

[4] On May 9, 2016, the FCC requested comment on whether Rolka Loube had "correctly calculated the weighted average projected costs for VRS for 2016 and 2017 and on the possible relevance of such cost data to the determination of the future ratemaking methodology for VRS." *See* FCC, *Rolka Loube Associates Submits Payment Formulas and Funding Requirement for the Interstate Telecommunications Relay Services for the 2016-2017 Fund Year*, CG Docket Nos. 03-123 & 10-51, Public Notice, DA 16-518, at 3 (May 9, 2016) (emphasis added).

[5] *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03-123, Report and Order and Declaratory Ruling, FCC 07-186, ¶¶ 52, 120 (Nov. 19, 2007).

[6] Rolka Loube Associates LLC, Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, CG Docket Nos. 03-123 & 10-51, at 27, 29 (Apr. 29, 2016) ("*2016 TRS Rate Filing*").

recognized that relief from the VRS rate glide path is currently necessary for the Tier I providers.[7] These are clear indications that, as previously explained to the Commission, a "weighted average" cost is materially less than a true average provider cost, and therefore calculating rates for the non-dominant providers based on a "weighted average" cost is inequitable.[8]

b. Structural reform of the VRS market is needed but proposed reforms have not yet been implemented or impacted the market.

The Commission has recognized that structural reform of the VRS market is needed in order for the VRS program to promote the goals of Congress.[9] In the *2011 VRS Reform FNPRM*, the Commission identified "a number of structural issues with the current program that have not only detracted from its historical success in providing communications services to individuals who are deaf, hard of hearing, deaf-blind, or have a speech disability, but may also threaten its future success."[10] The particular structural issues identified by the Commission included: insufficient development of VRS access technology standards resulting in the inappropriate lock-in of VRS users; a suboptimal VRS industry structure inconsistent with statutory goals; and a compensation mechanism that is unpredictable, potentially inefficient, and vulnerable to waste, fraud and abuse.[11]

In the *VRS Reform Order*, the Commission took steps towards addressing these issues, and a focus of its efforts was correcting lingering competition issues.[12] The Commission appropriately recognized the importance of standards to support interoperability and portability, as well as the need to address and curtail practices such as slamming and lack of access to video mail that result in anticompetitive advantages.[13] The focus on competition in the *VRS Reform Order* recognized that the VRS market has, for most

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[7] *See VRS Tier I Provider Rate Freeze Order*. The Tier I providers stress that there is effectively no change in their financial situation since that time.

[8] *See* Purple VRS Rate Freeze Comments at 9-11; Purple 2016-2017 Fund Estimate Comments at 5-6; Comments of Purple Communications, Inc., CG Docket Nos. 10-51 & 03-123, Addendum A: Report of Steven E. Turner, Managing Director – Economic Consulting, FTI Consulting, ¶¶ 43-47 (Nov. 14, 2012) ("Turner Report").

[9] *See generally Structure and Practices of the Video Relay Service Program* et al., CG Docket No. 10-51 *et al.*, Further Notice of Proposed Rulemaking, FCC 11-184 (Dec. 15, 2011) ("*2011 VRS Reform FNPRM*"); *VRS Reform Order*.

[10] *2011 VRS Reform FNPRM* ¶ 11.

[11] *Id.*

[12] *See VRS Reform Order*. On January 17, 2017, the Consumer and Governmental Affairs Bureau released a Report and Order incorporating into the VRS rules certain technical standards for the interoperability and portability of VRS services, equipment, and software. *See Structure and Practices of the Video Relay Service Program* et al., Report and Order and Further Notice of Proposed Rulemaking, CG Docket Nos. 10-51 & 03-123, DA 17-76 (CGB 2017).

[13] *VRS Reform Order* ¶¶ 6, 9, 275.

of its mature existence, been dominated by a de facto monopoly, supported in part by the same structural and competitive deficiencies that the Commission is seeking to address, such as sub-optimal interoperability.

Now, more than five years after the release of the *2011 VRS Reform FNPRM* and more than three years after the release of the *VRS Reform Order*, many of the anticipated structural and competitive reforms have yet to be implemented or take effect.

c. Continued dramatic VRS rate reductions will lock in a monopoly VRS market.

Despite the absence of meaningful structural reform, the VRS rate reductions implemented in the *VRS Reform Order* have moved forward, causing material decreases in VRS provider rates. Specifically, between 2013 and 2017, average VRS rates will have been reduced under the glide path by an estimated 25 percent.[14] Given these dramatic rate reductions, the Commission must now evaluate whether under the 2017 rates (when compared to previously reported cost data) any VRS provider other than Sorenson will be operating at a positive margin moving forward.[15] The Commission has acknowledged that providers operating with a high percentage of their minutes compensated at the Tier I rate have been the most dramatically impacted by the current rate glide path.[16] The rate reductions are threatening all of the non-dominant providers' viability and crippling their ability to effectively compete for market share.

Without meaningful rate reform, the non-dominant providers will be compelled to either exit the VRS market or operate their business with no thought toward competition, service and growth, thereby locking in a de facto monopoly market. Indeed, in March 2016, CAAG/Star VRS exited the VRS market, stating that it was "forced . . . to be the first [VRS provider] to close its doors" as the result of "inappropriate rate cuts" and "undelivered structural reforms."[17] The Commission has repeatedly stated that leaving only a single

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[14] *See 2016 TRS Rate Filing* at 24-25.

[15] *See 2016 TRS Rate Filing* at 24-25, 27, 29; *see also* Turner Report ¶¶ 16-18.

[16] In proposing, and subsequently granting, rate relief to Tier I providers, the Commission stated that it had "relied on an analysis by [Rolka Loube] showing that . . . the average projected allowable costs for the smallest VRS providers for 2015-16 were above the Tier I rates scheduled for the 2015-16 Fund Year, 'potentially jeopardizing their continuation of service,'" and the Commission concluded that, "absent rate relief, it is likely that the smallest providers either (1) will be unable to maintain their operations in 2016 or (2) will be unable to continue to grow their operations significantly in the direction of reaching optimum levels of efficiency." *VRS Tier I Provider Rate Freeze Order* ¶¶ 5, 10 (*quoting Structure and Practices of the Video Relay Service Program* et al., CG Docket Nos. 10-51 & 03-123, Further Notice of Proposed Rulemaking, 30 FCC Rcd at 12973, 12981, ¶ 18 (Nov. 3, 2015) ("*VRS Tier I Provider Rate Freeze FNPRM*")).

[17] *See* Hancock, Jahn, Lee & Puckett, LLC Letter, CG Docket Nos. 10-51 & 03-123 (Mar. 2, 2016) (CAAG/Star VRS also urged the Commission to "swiftly move toward significant

provider in the VRS market would be detrimental to consumer choice and the public interest.[18] Rate reform is unquestionably needed to prevent more providers from inevitably being forced to exit the market.

Additionally, the mandate of functional equivalence requires a VRS program characterized by competition, innovation, and quality service, with each factor critically important in promoting consumer choice.[19] VRS rates must be commensurate with the requirement to provide functionally equivalent service and recognize that functional equivalence is a constantly advancing standard. As the Consumer Groups have advocated, when setting VRS rates, the Commission must duly account for "research and development needs to encourage VRS providers to innovate and provide <u>ever improving</u> functional equivalency[,] . . . labor costs associated with improved speed-of-answer requirements[,] and 'adjust rates to reflect any increase over the historical costs upon which they were based' to meet its obligation to reimburse providers for all costs incurred to meet the mandatory minimum standards established by the agency."[20] The Consumer Groups have also consistently and resoundingly supported a competitive VRS market with multiple providers.[21]

[VRS] rate and structural reform that will protect *choice* in this precious service for our Deaf Community.").

[18] *See 2011 VRS Reform FNPRM* Appendix C ¶ 11 (the Commission stated that a single provider VRS market could "lead to a potentially unacceptable lack of consumer choice" and emphasized the importance of achieving "a reasonable balance between efficiency and the freedom of users to have more than one choice of VRS service provider."); *see also VRS Tier I Provider Rate Freeze FNPRM* ¶¶ 14-16 (the Commission stated that it "continue[s] to believe that, as stated in the *VRS Reform Order*, 'it is worth tolerating some degree of additional inefficiency in the short term, in order to maximize the opportunity for successful participation of multiple efficient providers in the future, in the more competition-friendly environment that we expect to result from our structural reforms.'" (quoting *VRS Reform Order* ¶ 200)).

[19] *See* 47 U.S.C. § 225.

[20] Notice of Ex Parte of Consumer Groups, CG Docket Nos. 10-51 & 03-123, at 4-5 (Apr. 7, 2015) (emphasis added) (*quoting Sorenson Communications, Inc. v. FCC*, 765 F.3d 37, 50-51 (D.C. Cir. 2014)).

[21] *See* Consumer Groups' TRS Policy Statement, CG Docket Nos. 10-51 & 03-123, at 9 (Apr. 12, 2011) (stating that one of the FCC's goals for the TRS market should be to "ensure[] intense competition among a number of qualified vendors . . . to give the TRS user population a range of choices in features and services"); National Association of the Deaf, *Position Statement on Functionally Equivalent Telecommunications for Deaf and Hard of Hearing People* (last accessed Jan. 2, 2016) (stating that one aspect of functionally equivalent TRS is "[c]ompetition among providers of relay services," which "fosters innovation, efficiency, and improved quality"), *available* <u>here</u>.

II. VRS RATE PROPOSAL

The non-dominant providers have developed a four-year rate proposal that moves each provider in the market closer to a reasonable operating margin, thereby helping the non-dominant providers remain in operation as planned competitive reforms are implemented and take effect and facilitating investment and innovation in VRS technology.[22] Additionally, the proposal will reduce overall costs to the TRS Fund – the proposed rate structure would result in an estimated total $14 million in savings to the TRS Fund in the first four years of its implementation. That cost savings will help to offset the diminishing TRS contribution base and reduce or eliminate the need to increase that base. The non-dominant providers therefore urge the Commission to expeditiously issue an FNPRM to begin implementing this proposed rate structure.

The proposed rate structure maintains a tiered rate framework and creates an "Emergent Rate" applicable only to providers relaying up to 500,000 minutes, as set out below:

VRS RATE PROPOSAL		
Tier	**Monthly Minutes**	**Proposed Rate**
Emergent Rate	0 – 500,000	$5.29
Tier I	0 – 1,000,000	$4.82
Tier II	1,000,001 – 2,500,000	$4.35
Tier III	> 2,500,000	$2.83

Providers within the Emergent Rate level – those relaying 500,000 or fewer minutes per month – would be compensated at the $5.29 per minute rate, which is the initial rate that the Commission established for those providers in the *VRS Tier I Provider Rate Freeze Order*.[23] As the Commission found in that *Order*, a higher rate for such providers is justified at this time by their current cost structure and the Commission's desire to maintain "diverse providers" that can "spur improvements in the availability, efficiency, and functional equivalence of VRS."[24] The Emergent Rate would only be applicable if the provider relays

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[22] The rate proposal detailed herein supersedes the prior VRS rate structure suggestion made by the non-dominant providers (separately or jointly) to Commission staff on October 20 and on November 1 and 15, 2016.

[23] *VRS Tier I Provider Rate Freeze Order* ¶ 1; *see also* ASL Services Holdings, LLC dba GlobalVRS Emergency Petition for Extension of the Rate Relief Termination Date on ASL Services Holdings, LLC dba GlobalVRS, CG Docket Nos. 10-51 & 03-123 (Aug. 12, 2016) (requesting that the Commission extend the temporary rate of $5.29 per minute for Tier I providers and explaining that the conditions that precipitated the Commission to provide rate relief for Tier I providers remain unchanged); Convo Communications LLC, Hancock, Jahn, Lee & Puckett LLC dba CAAG/Star VRS, and ASL Services Holdings, LLC dba GlobalVRS Emergency Petition for a Temporary *Nunc Pro Tunc* Waiver, CG Docket Nos. 10-51 & 03-123 (Nov. 25, 2015).

[24] *VRS Tier I Provider Rate Freeze Order* ¶¶ 8, 11-12.

500,000 or fewer monthly minutes, and providers relaying more than 500,000 minutes would be compensated at the applicable "Tier" rate.[25]

Notably, and despite the absence of meaningful competitive reform as planned in the *VRS Reform Order*, the proposed rates are significantly reduced from the rates that were in place when the downward VRS rate glide path began, consistent with the Commission's (and providers') goal of reducing the burden on the TRS Fund of providing VRS. That reduction in rates under the rate proposal is shown in the following table:

REDUCTION IN VRS RATES UNDER THE PROPOSED RATE STRUCTURE			
Monthly Minute Level	**July-Dec. 2013 Rate**	**Proposed Rate**	**Percent Reduction In Applicable Rate**
0 – 500,000	$5.98	$5.29	11.5%
0 – 1,000,000	$5.40 (Avg.)[26]	$4.82	10.74%
1,000,001 – 2,500,000	$4.82	$4.35	9.75%
> 2,500,000	$4.82	$2.83	41.29%[27]

The proposed Tier I rate of $4.82 is the rate that was in place from January 1, 2016 to June 30, 2016 for providers relaying up to one million minutes. The proposed Tier II rate is set at $4.35. The proposed Tier III rate is set at the Rolka Loube industry weighted average cost for 2015 of $2.83 per minute (when including "Outreach" costs and excluding "Return on Investment").

The rate proposal also acknowledges that the economies of scale and attendant cost reductions that are needed to operate at the Tier III reimbursement rate are not achieved until a provider reaches approximately 2.5 million minutes per month.[28] The current rate

[25] So, for example, a provider relaying 500,000 minutes would be compensated at $5.29 for all minutes relayed, while a provider relaying 500,001 minutes would be compensated at the proposed Tier I rate of $4.82 for all minutes relayed, a significant drop of $0.47 per minute.

[26] Note that for July-Dec., 2013 the Tier I (0-500,000 minutes/month) rate was $5.98, and the Tier II (500,001-1,000,000 minutes/month) rate was $4.82, meaning that a provider relaying 1,000,000 minutes month would earn an average of $5.40 per minute.

[27] Note that the 41.29% rate reduction applicable under the proposed rate structure for minutes relayed above 2.5 million per month does not indicate that the dominant provider's realized rate would be reduced by 41.29%. Rather, the dominant provider's realized rate would be reduced by substantially less than 41.29% compared to 2013 rates because the minute thresholds for each Tier under the proposed rate structure are higher than the minute thresholds under the current VRS rate Tiers, meaning that as compared to the current rate structure, under the proposed rate structure a larger percentage of the dominant provider's minutes will be compensated at higher rates applicable to lower Tiers.

[28] Certain of the non-dominant providers will be individually submitting company-specific data including cost data in connection with this filing and rate proposal. Later submissions will explain in detail the basis for this conclusion.

structure assumes that a provider is able to significantly reduce its costs of providing VRS at approximately 1 million minutes relayed per month. However, Purple estimates that in the VRS market, the majority of economies of scale are actually achieved when a provider reaches approximately 2.5 million monthly minutes, and that after that point continued growth yields substantially less economies of scale and cost reduction.[29] The non-dominant providers therefore propose raising the minute threshold for both Tier I and II, and setting the minute threshold for the highest tier, Tier III, at 2.5 million minutes per month.[30]

By adopting the proposed rates, which take into consideration volume and scale, the Commission has the opportunity to move each provider toward a more reasonable per minute operating margin. And, critically, the proposal would generate an estimated[31] $14 million in cost savings to the TRS Fund in the first four years of its implementation:

New 3 Tier Model Saves the Fund Money

Year	Industry Minutes	Fund Demand 2017 Rates	Fund Demand (New Tiers/Rates)	Increase / (Decrease)
2017	133,695,044	$ 490,616,034	$ 486,485,495	$ (4,130,539)
2018	138,068,288	$ 506,390,749	$ 502,745,814	$ (3,644,935)
2019	142,441,532	$ 522,446,756	$ 519,106,863	$ (3,339,893)
2020	146,814,777	$ 538,567,508	$ 535,774,678	$ (2,792,831)
Totals	561,019,641	$ 2,058,021,047	$ 2,044,112,849	$ (13,908,198)

- Assumes an approximate 3.1% annual increase in total VRS minutes (based on past 7 years)

For the reasons above, the non-dominant providers respectfully recommend that the Commission propose to implement this rate structure by expeditiously issuing an FNPRM addressing rate reform including this rate proposal. The effective date of the proposed rates should be retroactive to January 1, 2017 because, as demonstrated by previously submitted cost data, and as will be shown in cost data submitted by the individual non-dominant providers subsequent to this filing, the current VRS rates are not sustainable for all providers and do not allow for the investment necessary to grow market share in the VRS marketplace.

[29] *Id.*; *see also* Turner Report ¶¶ 16-24 (explaining that the VRS industry is characterized by significant economies of scale).

[30] Note that the proposed Tier minute thresholds are based on cost estimates made under the current "waterfall" Tier structure, in which providers receive a different (and decreasing) compensation rate for minutes in Tier I, Tier II and Tier III. Should the Commission decide to eliminate the waterfall structure, the Tier minute thresholds would need to be reevaluated.

[31] This reflects one provider's estimate of the VRS market size and TRS Fund demand based on data provided in Rolka Loube's annual reports. *See, e.g., 2016 TRS Rate Filing* Exhibit 2. The analysis underlying this estimate and the chart above will be detailed in a subsequent submission. No provider cost, minute, or other sensitive data was shared in order to calculate this estimate or compile the chart above.

III. SKILLS-BASED ROUTING AND VRS SERVICE QUALITY METRICS

The non-dominant providers further advocate that the Commission issue the FNPRM regarding rate reform – and presenting the rate structure detailed above – contemporaneously with: (1) an Order that implements a trial of skills-based routing that includes the use of deaf interpreters and CDIs, and that allows VRS providers to assign ten-digit iTRS numbers to hearing individuals who use ASL to communicate; and (2) a NOI regarding appropriate VRS service quality metrics.[32]

a. The Commission should implement a trial of skills-based routing.

The non-dominant providers continue to support a trial offering of skills-based routing as stated in the Joint Provider Proposal.[33] VRS users will benefit from access to interpreters with particular skill sets or specialized knowledge (*e.g.*, legal, medical, or technical knowledge) that a generalist VRS interpreter might not possess.[34] The Commission should implement an 8-month, competition-neutral[35] trial for skills-based routing in which participation by the provider is voluntary, not mandatory, and – because the purpose of the trial is to explore potential improvements in functional equivalence – providers should be able to recover any exogenous costs incurred as part of the trial.[36] To control costs

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[32] *See* United States Government Accountability Office, *TRS: FCC Should Strengthen Its Management of Program to Assist Persons with Hearing or Speech Disabilities*, Report to the Honorable Jeff Sessions, at 17-20 (Apr. 2015) (recommending that the FCC establish service metrics and "performance goals" to assess the TRS program's progress in meeting its intended outcomes), *available at* www.gao.gov/products/GAO-15-409.

[33] *See* ASL Services Holdings, LLC dba GlobalVRS, Convo Communications, LLC, CSDVRS, LLC, Hancock Jahn Lee & Puckett, Purple Communications, Inc., Sorenson Communications, Inc., Joint Proposal of All Six VRS Providers for Improving Functional Equivalence and Stabilizing Rates, CG Docket Nos. 10-51 & 03-123, at 4-6 (Mar. 30, 2015) ("Joint Provider Proposal"), *available* here; *see also VRS Tier I Provider Rate Freeze FNPRM* ¶¶ 43-50.

[34] The non-dominant providers do not consider Spanish language and deaf-blind interpretation to be "skills-based" under this proposal as Spanish language and deaf-blind interpretation are a necessary means for Spanish speaking and for deaf-blind individuals, respectively, to communicate in a functionally equivalent manner.

[35] *See* Comments of Convo Communications, LLC, CG Docket Nos. 03-123 & 10-51, at 12-15 (Jan. 4, 2016) ("Convo Service Improvements Comments") (advocating that the trial be competition-neutral and providing recommendations to ensure that the trial is used only to obtain the desired data about the use of skills-based routing in VRS).

[36] As a general matter, it may be difficult or impossible for the Commission or for providers to predict the extent of exogenous costs that will be incurred in the implementation of a new TRS service offering, service quality standard, or new technology. Allowing providers to recover certain exogenous costs, such as those incurred in implementing Commission-directed reforms, would promote the financial stability that providers need to continue innovation and investment in improved service. This would be consistent with the approach

associated with the trial, the Commission should establish a cap on the dollar amount in costs incurred during the trial that each provider may recover.

To maximize the benefits of the trial for consumers and the quality of information gathered by providers and the Commission, providers should be permitted to experiment with different skill offerings to identify and assess needs within the market. Further, principally because the number of available specialized interpreters will be limited, the "sequential call rule" should be waived for successive calls not requiring the interpreter with the specialized skill,[37] and skills-based routing calls should be excluded from speed-of-answer compliance calculations.

b. The Commission should amend its rules to permit compensation for the use of deaf interpreters, and the skills-based routing trial should include the use of deaf interpreters and CDIs.

The non-dominant providers support the Commission's proposal to compensate providers for the use of deaf interpreters, and the skills-based routing trial should include the use of deaf interpreters and CDIs to allow the Commission and providers to gather the data needed to assess the benefits and costs of using deaf interpreters. For certain individuals, such as consumers with limited English or ASL proficiency, consumers with cognitive disabilities, and some children, the use of a deaf interpreter may be required to ensure that effective communication is taking place, as noted in the Joint Provider Proposal.[38] Further, the use of deaf interpreters can reduce the strain on the general interpreter pool by allowing the generalist interpreter to rely on the specialized interpretation provided by the deaf interpreter, rather than having to interpret the rudimentary sign language.[39] The non-dominant providers therefore support including the use of deaf interpreters and CDIs as

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taken by the Commission in connection with the 10-digit numbering Order, for example, where providers were allowed to submit exogenous costs for reimbursement.

[37] The sequential call rule prohibits VRS communications assistants from "refusing . . . sequential calls." 47 C.F.R. § 64.604(a)(3)(i). However, as stated in the Joint Provider Proposal, "[t]he resources for specialized interpreters will be scarce. Allowing these interpreters to immediately move onto calls that require their specialized skill without requiring them to take sequential calls that do not require their specialized skill will minimize the wait for other skill-based-routing requests." Joint Provider Proposal at 6.

[38] *See* Joint Provider Proposal at 6; Comments of Purple Communications, Inc., CG Docket Nos. 10-51 & 03-123, at 9-11 (Jan. 4, 2016) ("Purple Service Improvements Comments"); *see also* Convo Service Improvements Comments at 8-9 (noting that studies of the National Consortium of Interpreter Education Centers indicate that the use of deaf interpreters "enable effective communications that are often not possible when hearing ASL-English interpreters work alone"); *see also* Comments of ZVRS, CG Docket Nos. 10-51 & 03-123, at 15-16 (Jan. 4, 2016) ("ZVRS Service Improvements Comments"); Comments of ASL Services Holdings, LLC, CG Docket Nos. 10-51 & 03-123, at 16-18 (Jan. 4, 2016) ("GlobalVRS Service Improvements Comments").

[39] Joint Provider Proposal at 6.

part of the skills-based routing trial, and support the Commission's proposal to allow for compensation for the use of deaf interpreters and CDIs.

c. The Commission should allow VRS providers to assign ten-digit iTRS numbers to hearing individuals.

The Commission should allow VRS providers to assign ten-digit iTRS numbers to hearing individuals to enable them to place and receive point-to-point video calls to and from other VRS users as proposed.[40,41] The non-dominant providers agree that doing so will "increase the functional equivalence of TRS by facilitating telephone communication between members of the deaf and hearing communities."[42] The proposal may also reduce costs to the TRS Fund that are incurred when hearing individuals who are proficient in sign language use VRS but could instead be communicating point-to-point with deaf persons.

d. The Commission should issue a Notice of Inquiry to develop the record regarding appropriate VRS service quality metrics.

The Commission is currently considering various other "measures that could enhance the functional equivalence of VRS," including a proposal to adopt a faster VRS speed-of-answer requirement (the "80/45 Monthly" requirement).[43] As stated in the Joint Provider Proposal, the non-dominant providers support the proposed 80/45 Monthly standard, but again encourage the Commission to recognize that "it is impossible to meet more stringent speed-of-answer requirements if rates are not commensurate with the requirement."[44] It is critical, therefore, that the Commission consider rates and proposed service improvements in parallel, not separately. Accordingly, the non-dominant providers recommend that the Commission issue an NOI regarding appropriate service quality metrics for VRS, including speed-of-answer, together with the proposed Order and rate reform FNPRM.

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[40] *See* Purple Service Improvements Comments at 12-13; Convo Service Improvements Comments at 17-19; ZVRS Service Improvements Comments at 13-15; GlobalVRS Service Improvements Comments at 19-20.

[41] The Commission's proposal is also supported by the Consumer Groups and the Registry of Interpreters for the Deaf. *See* Comments of Consumer Groups, CG Docket Nos. 10-51 & 03-123, at 13-14 (Dec. 24, 2015); Comments of Registry of Interpreters for the Deaf, Inc., CG Docket Nos. 10-51 & 03-123, at 11-12 (Jan. 4, 2016).

[42] *VRS Tier I Provider Rate Freeze FNPRM* ¶ 62.

[43] *VRS Tier I Provider Rate Freeze FNPRM* ¶¶ 1, 33 (the Commission has proposed to "strengthen[] the speed-of-answer rule to require that 80 percent of all VRS calls be answered within 45 seconds, measured on a monthly basis").

[44] *See* Joint Provider Proposal at 2 (noting that "unrealistic speed-of-answer requirements create an unreasonably stressful work environment for interpreters, which increases interpreter turnover, decreases the already limited supply of interpreters who are willing to work in VRS, and lowers the quality of interpreting and consumer experience"); *see also Sorenson Communications, Inc. v. FCC*, 765 F.3d 37 (D.C. Cir. 2014).

As part of its VRS improvement measures, the Commission should charge the Relay/Equipment Distribution Subcommittee of the Commission's Disability Advisory Committee with preparing a report that looks at the state of functional equivalency in VRS and recommends measures that would propel VRS to attain functional equivalency.

* * * * *

Current and scheduled VRS rate reductions threaten to eliminate the non-dominant providers from the VRS market, locking in a monopoly market in which consumers have no choice regarding their VRS provider. The non-dominant providers respectfully request that the Commission issue an FNPRM proposing to implement the rate framework detailed above, which brings each provider in the market closer to a reasonable operating margin, helping the non-dominant providers remain in operation as planned competitive reforms are implemented and take effect, while also reducing costs to the TRS Fund. Further, the non-dominant providers urge the Commission to issue the proposed Order on service enhancements and an NOI regarding appropriate service quality metrics for VRS contemporaneously with the VRS rate FNPRM.

Should you have any questions regarding the foregoing, please contact the undersigned.

Respectfully submitted,

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